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8 **BEFORE THE**
RESPIRATORY CARE BOARD
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. R-2088

12 TIMOTHY D. GARCIA
13 3115 W. Beech Ave.
Visalia, CA 93277

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

14 Respiratory Care Practitioner license No. 7575

15 Respondent.
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18 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the
19 above-entitled proceedings that the following matters are true:

20 **PARTIES**

21 1. Stephanie Nunez (Complainant) is the Executive Officer of the
22 Respiratory Care Board of California. She brought this action solely in her official capacity and
23 is represented in this matter by Edmund G. Brown Jr., Attorney General of the State of
24 California, by Catherine E. Santillan, Senior Legal Analyst.

25 2. Respondent Timothy D. Garcia (Respondent) is representing himself in
26 this proceeding and has chosen not to exercise his right to be represented by counsel.

27 3. On or about July 26, 1985, the Respiratory Care Board of California issued
28 Respiratory Care Practitioner license No. 7575 to Timothy D. Garcia (Respondent). The license

1 was in full force and effect at all times relevant to the charges brought in Accusation No. R-2088
2 and will expire on September 30, 2008, unless renewed.

3 JURISDICTION

4 4. Accusation No. R-2088 was filed before the Respiratory Care Board
5 (Board), Department of Consumer Affairs, and is currently pending against Respondent. The
6 Accusation and all other statutorily required documents were properly served on Respondent on
7 June 26, 2007. Respondent timely filed his Notice of Defense contesting the Accusation. A
8 copy of Accusation No. R-2088 is attached as exhibit A and incorporated herein by reference.

9 ADVISEMENT AND WAIVERS

10 5. Respondent has carefully read, and understands the charges and allegations
11 in Accusation No. R-2088. Respondent has also carefully read, and fully understands the effects
12 of this Stipulated Settlement and Disciplinary Order.

13 6. Respondent is fully aware of his legal rights in this matter, including the
14 right to a hearing on the charges and allegations in the Accusation; the right to be represented by
15 counsel at his own expense; the right to confront and cross-examine the witnesses against him;
16 the right to present evidence and to testify on his own behalf; the right to the issuance of
17 subpoenas to compel the attendance of witnesses and the production of documents; the right to
18 reconsideration and court review of an adverse decision; and all other rights accorded by the
19 California Administrative Procedure Act and other applicable laws.

20 7. Respondent voluntarily, knowingly, and intelligently waives and gives up
21 each and every right set forth above.

22 CULPABILITY

23 8. Respondent admits the truth of each and every charge and allegation in
24 Accusation No. R-2088.

25 9. Respondent agrees that his Respiratory Care Practitioner license is subject
26 to discipline and he agrees to be bound by the Respiratory Care Board (Board) 's imposition of
27 discipline as set forth in the Disciplinary Order below.

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1 employer informs the Board, in writing, that it is aware of the dates of suspension.

2 2. WORK SCHEDULES Respondent shall be required to submit to the
3 probation monitor work schedules on a weekly/monthly basis for the length of probation.
4 Respondent shall ensure the Board has a copy of his current work schedule at all times for each
5 place of employment.

6 Failure to submit current work schedules on a continuous basis shall constitute a
7 violation of probation and shall result in the filing of an accusation and/or a petition to revoke
8 probation against Respondent's respiratory care practitioner license.

9 3. BIOLOGICAL FLUID TESTING Respondent, at his expense, shall
10 participate in random testing, including, but not limited to, biological fluid testing (i.e. urine,
11 blood, saliva), breathalyzer, hair follicle testing, or a drug screening program approved by the
12 Board. Test costs range from \$21.00 to \$200.00 each. The length of time shall be for the entire
13 probation period. The frequency and location of testing will be determined by the Board.

14 At all times, Respondent shall fully cooperate with the Board or any of its
15 representatives, and shall, when directed, appear for testing as requested and submit to such tests
16 and samples for the detection of alcohol, narcotics, hypnotics, dangerous drugs or other
17 controlled substances.

18 If Respondent is unable to provide a specimen in a reasonable amount of time
19 from the request, while at the work site, Respondent understands that any Board representative
20 may request from the supervisor, manager or director on duty to observe Respondent in a manner
21 that does not interrupt or jeopardize patient care in any manner until such time Respondent
22 provides a specimen acceptable to the Board.

23 Failure to submit to testing or appear as requested by any Board representative for
24 testing, as directed shall constitute a violation of probation and shall result in the filing of an
25 accusation and/or a petition to revoke probation against Respondent's respiratory care
26 practitioner license.

27 4. ABSTENTION FROM USE OF ANY AND ALL MOOD ALTERING
28 SUBSTANCES Respondent shall completely abstain from the possession or use of alcohol,

1 controlled substances, dangerous drugs, and any and all other mood altering drugs, substances
2 and their associated paraphernalia, except when the drugs are lawfully prescribed by a licensed
3 practitioner as part of a documented medical treatment.

4 Respondent shall execute a release authorizing the release of pharmacy and
5 prescribing records as well as physical and mental health medical records. Respondent shall also
6 provide information of treating physicians, counselors or any other treating professionals as
7 requested by the Board.

8 Respondent shall ensure that he is not in the presence of or in the same physical
9 location as individuals who are using illegal substances, even if Respondent is not personally
10 ingesting the drug(s).

11 Any positive result that registers over the established laboratory cutoff level shall
12 constitute a violation of probation and shall result in the filing of an accusation and/or a petition
13 to revoke probation against Respondent's respiratory care practitioner license.

14 Respondent also understands and agrees that any positive result that registers over
15 the established laboratory cutoff level shall be reported to each of Respondent's employers.

16 5. RESTRICTION OF PRACTICE Respondent may not be employed or
17 function as a member of a respiratory care management or supervisory staff during the entire
18 length of probation. This includes lead functions.

19 Respondent is prohibited from working in home care unless it is under direct supervision
20 and personal observation.

21 Respondent is prohibited from working for a registry.

22 6. SUPERVISOR QUARTERLY REPORTS Supervisor Quarterly Reports
23 of Performance are due for each year of probation and the entire length of probation from each
24 employer, as follows:

25 For the period covering January 1st through March 31st, reports are to be
26 completed and submitted between April 1st and April 7th. For the period covering April 1st
27 through June 30th, reports are to be completed and submitted between July 1st and July 7th. For
28 the period covering July 1st through September 30th, reports are to be completed and submitted

1 between October 1st and October 7th. For the period covering October 1st through December 31st,
2 reports are to be completed and submitted between January 1st and January 7th.

3 Respondent is ultimately responsible for ensuring his employer(s) submits
4 complete and timely reports. Failure to ensure each employer submits complete and timely
5 reports shall constitute a violation of probation.

6 7. OBEY ALL LAWS Respondent shall obey all laws, whether federal,
7 state, or local. Respondent shall also obey all regulations governing the practice of respiratory
8 care in California.

9 Respondent shall notify the Board in writing within 14 days of any incident
10 resulting in his arrest, or charges filed against, or a citation issued against Respondent.

11 8. QUARTERLY REPORTS Respondent shall file quarterly reports of
12 compliance under penalty of perjury, on forms to be provided to the probation monitor assigned
13 by the Board. Omission or falsification in any manner of any information on these reports shall
14 constitute a violation of probation and shall result in the filing of an accusation and/or a petition
15 to revoke probation against Respondent's respiratory care practitioner license.

16 Quarterly report forms will be provided by the Board. Respondent is responsible
17 for contacting the Board to obtain additional forms if needed. Quarterly reports are due for each
18 year of probation and the entire length of probation as follows:

19 For the period covering January 1st through March 31st, reports are to be
20 completed and submitted between April 1st and April 7th. For the period covering April 1st
21 through June 30th, reports are to be completed and submitted between July 1st and July 7th. For
22 the period covering July 1st through September 30th, reports are to be completed and submitted
23 between October 1st and October 7th. For the period covering October 1st through December 31st,
24 reports are to be completed and submitted between January 1st and January 7th.

25 Failure to submit complete and timely reports shall constitute a violation of
26 probation.

27 9. PROBATION MONITORING PROGRAM Respondent shall comply
28 with requirements of the Board appointed probation monitoring program, and shall, upon

1 reasonable request, report to or appear to a local venue as directed.

2 Respondent shall claim all certified mail issued by the Board, respond to all
3 notices of reasonable requests timely, and submit Annual Reports, Identification Update reports
4 or other reports similar in nature, as requested and directed by the Board or its representative.

5 Respondent is encouraged to contact the Board's Probation Program at any time
6 he has a question or concern regarding his terms and conditions of probation.

7 Failure to appear for any scheduled meeting or examination, or cooperate with the
8 requirements of the program, including timely submission of requested information, shall
9 constitute a violation of probation and will result in the filing of an accusation and/or a petition to
10 revoke probation against Respondent's respiratory care practitioner license.

11 10. PROBATION MONITORING COSTS All costs incurred for probation
12 monitoring during the entire probation shall be paid by the Respondent. The monthly cost may
13 be adjusted as expenses are reduced or increased. Respondent's failure to comply with all terms
14 and conditions may also cause this amount to be increased.

15 All payments for costs are to be sent directly to the Respiratory Care Board and
16 must be received by the date(s) specified. (Periods of tolling will not toll the probation
17 monitoring costs incurred.)

18 If Respondent is unable to submit costs for any month, he shall be required instead
19 to submit an explanation of why he is unable to submit the costs, and the date(s) he will be able
20 to submit the costs including payment amount(s). Supporting documentation and evidence of
21 why the Respondent is unable to make such payment(s) must accompany this submission.

22 Respondent understands that failure to submit costs timely is a violation of
23 probation and submission of evidence demonstrating financial hardship does not preclude the
24 Board from pursuing further disciplinary action. However, Respondent understands providing
25 evidence and supporting documentation of financial hardship may delay further disciplinary
26 action.

27 In addition to any other disciplinary action taken by the Board, an unrestricted
28 license will not be issued at the end of the probationary period and the respiratory care

1 practitioner license will not be renewed, until such time all probation monitoring costs have been
2 paid.

3 The filing of bankruptcy by Respondent shall not relieve the Respondent of his
4 responsibility to reimburse the Board for costs incurred.

5 11. EMPLOYMENT REQUIREMENT Respondent shall be employed a
6 minimum of 24 hours per week as a respiratory care practitioner for a minimum of 2/3 of his
7 probation period.

8 Respondent may substitute successful completion of a minimum of thirty (30)
9 additional continuing education hours, beyond that which is required for license renewal, for
10 each 8 months of employment required. Respondent shall submit proof to the Board of
11 successful completion of all continuing education requirements. Respondent is responsible for
12 paying all costs associated with fulfilling this term and condition of probation.

13 12. NOTICE TO EMPLOYER Respondent shall be required to inform his
14 employer, and each subsequent employer during the probation period, of the discipline imposed
15 by this decision by providing his supervisor and director and all subsequent supervisors and
16 directors with a copy of the decision and order, and the Statement(s) of Issues or Accusation(s) in
17 this matter prior to the beginning of or returning to employment or within 14 days from each
18 change in a supervisor or director.

19 If Respondent is employed by or through a registry [and is not restricted from
20 working for a registry], Respondent shall make each hospital or establishment to which he is sent
21 aware of the discipline imposed by this decision by providing his direct supervisor and
22 administrator at each hospital or establishment with a copy of this decision, and the Statement(s)
23 of Issues or Accusation(s) in this matter prior to the beginning of employment. This must be
24 done each time there is a change in supervisors or administrators.

25 The employer will then inform the Board, in writing, that he is aware of the
26 discipline, on forms to be provided to the Respondent. Respondent is responsible for contacting
27 the Board to obtain additional forms, if needed. All reports completed by the employer must be
28 submitted from the employer directly to the Board.

Respondent shall execute a release authorizing the Board or any of its representatives to review and obtain copies of all employment records and discuss and inquire of the probationary status with any of Respondent's supervisors or directors.

13. CHANGES OF EMPLOYMENT OR RESIDENCE Respondent shall notify the Board, and appointed probation monitor, in writing, of any and all changes of employment, location, and address within 14 days of such change. This includes, but is not limited to, applying for employment, termination or resignation from employment, change in employment status, change in supervisors, administrators or directors.

Respondent shall also notify his probation monitor AND the Board IN WRITING of any changes of residence or mailing address within 14 days. P.O. Boxes are accepted for mailing purposes, however the Respondent must also provide his physical residence address as well.

14. SURRENDER OF LICENSE Following the effective date of this decision, if Respondent ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the terms and conditions of probation, he may request the voluntary surrender of his license. The Board reserves the right to evaluate Respondent's request and to exercise its discretion whether or not to grant the request or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, within 15 calendar days Respondent shall deliver his wallet and wall certificate to the Board or its designee and he shall no longer practice respiratory care. Respondent will no longer be subject to the terms and conditions of probation and the surrender of Respondent's license shall be deemed disciplinary action. If Respondent re-applies for a respiratory care license, the application shall be treated as a petition for reinstatement of a revoked license.

15. COST RECOVERY Respondent shall pay to the Board a sum not to exceed the costs of the investigation and prosecution of this case. That sum shall be \$808.00 and shall be paid in full directly to the Board, in equal quarterly payments, within 12 months from the effective date of this decision. Cost recovery will not be tolled.

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1 If Respondent is unable to submit costs timely, he shall be required instead to
2 submit an explanation of why he is unable to submit these costs in part or in entirety, and the
3 date(s) he will be able to submit the costs including payment amount(s). Supporting
4 documentation and evidence of why the Respondent is unable to make such payment(s) must
5 accompany this submission.

6 Respondent understands that failure to submit costs timely is a violation of
7 probation, and submission of evidence demonstrating financial hardship does not preclude the
8 Board from pursuing further disciplinary action. However, Respondent understands that
9 providing evidence and supporting documentation of financial hardship may delay further
10 disciplinary action.

11 Consideration to financial hardship will not be given should Respondent violate
12 this term and condition, unless an unexpected AND unavoidable hardship is established from the
13 date of this order to the date payment(s) is due.

14 The filing of bankruptcy by the Respondent shall not relieve the Respondent of his
15 responsibility to reimburse the Board for these costs.

16 16. TOLLING FOR OUT-OF-STATE RESIDENCE OR PRACTICE Periods
17 of residency or practice outside California, whether the periods of residency or practice are
18 temporary or permanent, will toll the probation period, but will not toll the cost recovery
19 requirement, nor the probation monitoring costs incurred. Travel out of California for more than
20 30 days must be reported to the Board in writing prior to departure. Respondent shall notify the
21 Board, in writing, within 14 days, upon his return to California and prior to the commencement
22 of any employment where representation as a respiratory care practitioner is/was provided.

23 17. VALID LICENSE STATUS Respondent shall maintain a current, active
24 and valid license for the length of the probation period. Failure to pay all fees and meet
25 Continuing Education requirements prior to his license expiration date shall constitute a violation
26 of probation.

27 18. VIOLATION OF PROBATION If Respondent violates any term of the
28 probation in any respect, the Board, after giving Respondent notice and the opportunity to be

1 heard, may revoke probation and carry out the disciplinary order that was stayed. If a petition to
2 revoke probation is filed against Respondent during probation, the Board shall have continuing
3 jurisdiction and the period of probation shall be extended until the matter is final. No petition for
4 modification of penalty shall be considered while there is an accusation or petition to revoke
5 probation or other penalty pending against Respondent.

6 19. COMPLETION OF PROBATION Upon successful completion of
7 probation, Respondent's license shall be fully restored.

8 ACCEPTANCE

9 I have carefully read the Stipulated Settlement and Disciplinary Order. I
10 understand the stipulation and the effect it will have on my Respiratory Care Practitioner license.
11 I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and
12 intelligently, and agree to be bound by the Decision and Order of the Respiratory Care Board.

13 DATED: 7/31/07.

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16 TIMOTHY D. GARCIA
17 Respondent
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1 ENDORSEMENT

2 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
3 submitted for consideration by the Respiratory Care Board of the Department of Consumer
4 Affairs.

5 DATED: 8/7/2007

6 EDMUND G. BROWN JR., Attorney General
7 of the State of California

8 JOSE R. GUERRERO
9 Supervising Deputy Attorney General

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11 CATHERINE E. SANTILLAN
12 Senior Legal Analyst

13 Attorneys for Complainant

14 DOJ Matter ID: SF2007401107
15 40158397.wpd
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**BEFORE THE
RESPIRATORY CARE BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. R-2088

TIMOTHY D. GARCIA
3115 W. Beech Avenue
Visalia, CA 93277

Respiratory Care Practitioner License No. 7575

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Respiratory Care Board of California, Department of Consumer Affairs, as its Decision in the above entitled matter.

This Decision shall become effective on September 17, 2007.

It is so ORDERED September 6, 2007.

Original signed by:

LARRY L. RENNER, BS, RRT, RCP, RPFT
PRESIDENT, RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA